MOUNTAIN STATES RESOURCES CORP.

IBLA 87-529 Decided October 5, 1989

Appeal from a decision of the Utah State Office, Bureau of Land Management, terminating coal lease U-5135.

Affirmed.

1. Coal Leases and Permits: Diligence--Coal Leases and Permits: Termination

Sec. 6 of the Federal Coal Leasing Amendments Act of 1976, 30 U.S.C. § 207 (1982), requires that any coal lease not producing in commercial quantities at the end of 10 years be terminated. No suspension of this obligation to commence production is authorized by statute or regulation, and BLM properly terminates a lease on which there has been no production during the 10-year diligent development period.

APPEARANCES: Stephen Roth, Esq., Salt Lake City, Utah, for appellant.

OPINION BY ADMINISTRATIVE JUDGE HARRIS

Mountain States Resources Corporation (MSR) has appealed from a decision dated May 7, 1987, by the Utah State Office, Bureau of Land Management (BLM), terminating coal lease U-5135, effective May 1, 1987, for failure to meet diligent development requirements.

Lease U-5135 was issued to MSR effective May 1, 1977, as a preference right lease. At that time, the diligent development provisions of sec-tion 6(b) of the Federal Coal Leasing Amendments Act (FCLAA) of August 4, 1976, 30 U.S.C. § 207(b) (1982), were effective. In regulations promulgated in 1982, the Department defined diligent development as "the production of recoverable coal reserves in commercial quantities prior to the end of the diligent development period." 43 CFR 3480.0-5(a)(12). 1/ Commercial

1/ The regulations containing definitions relating to coal exploration and mining operations, as promulgated in 1982, were part of 30 CFR Part 211. 47 FR 33179-81 (July 30, 1982). Thereafter, they were redesignated and made a part of 43 CFR Part 3480. 48 FR 41589 (Sept. 16, 1983). Citations in this decision are to the 43 CFR Part 3480 regulations.

quantities means 1 percent of the recoverable coal reserves. 43 CFR 3480.0-5(a)(6). For the lease in question, the 10-year diligent development period commenced on the effective date of the lease. See 43 CFR 3480.0-5(a)(13). 2/

By decision dated October 21, 1977, BLM approved the assignment of three subleases of lease U-5135 between Marad Exploration Company (Marad), as sublessee and MSR, as sublessor. Together, the subleases conveyed to Marad the right to mine and dispose of all the coal on the leased lands by strip and/or underground methods.

By letter of February 6, 1978, the Geological Survey (GS) notified Marad of its determination, as of May 1, 1977, that the lease contained 74,318,000 tons of recoverable coal reserves. It advised that 1 percent, or 743,000 tons of coal would have to be produced before May 1, 1987, and 743,000 tons each year after diligent development was achieved. The letter allowed Marad 60 days to protest those production requirements and indicated that a courtesy copy was sent to MSR. 3/ The record contains no evidence that those requirements were protested either by Marad or MSR.

Thereafter in 1978, BLM approved the assignment of the subleases covering U-5135 from Marad to Ute Energy Company. By decision dated January 31, 1984, BLM approved Ute Energy Company's assignment of its interest in lease U-5135 back to MSR.

On February 13, 1984, MSR filed a petition with BLM seeking waiver of rents, suspension of operations and minimum production requirements, and reduction of royalties for two coal leases, one of which was U-5135. BLM denied the petition by decision dated April 30, 1984, and MSR appealed. In Mountain States Resources Corp., 92 IBLA 184, 93 I.D. 239 (1986), this Board affirmed BLM's decision, modifying it to the extent of explaining that since no development had taken place on lease U-5135, MSR's request for a suspen-sion was "actually a request for suspension of its diligent development obligation and the statutory 10-year period required for its satisfaction." Id. at 188, 93 I.D. at 242. The Board discussed the diligent development requirement within the framework of FCLAA's legislative history, and held that no suspension of the obligation to commence production is authorized by statute or regulation. Id. at 189-93, 93 I.D. at 242-44.

In the decision now before us on appeal, BLM states that no coal has been produced on U-5135 since its issuance on May 1, 1977. Accordingly, BLM terminated the lease under the authority of section 6(a) of FCLAA, 30 U.S.C. § 207(a) (1982), which provides in part: "Any lease which is not producing

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2/ Lease U-5135 required the lessee to engage in "diligent development" and thereafter, "continuous operation" of the mine or mines on the leased lands. These terms preexisted FCLAA and were emphasized by Congress in enacting that statute because one of the important objectives of FLCAA was to respond to the widespread speculation in the coal leasing program prior to 1976.

3/ Exhibit A, MSR's statement of reasons (SOR).

in commercial quantities at the end of ten years shall be terminated." 4/
MSR does not deny that no coal was produced on the lease. It states: "In 1985 it would have cost MSR $8 million to put the mine into operation. Accordingly MSR made the decision not to attempt to develop U-5135 because it was advised by independent engineers that it could not build the mine and make the production within the 1987 deadline" (SOR at 7).

Despite its failure to produce, MSR claims that BLM erred in terminating its lease because MSR never received a copy of GS's February 6, 1978, letter to MSR's sublessee Marad, relating to production requirements on U-5135. Thus, MSR argues that it had no notice of production or diligence requirements, no opportunity to protest those requirements, and was therefore deprived of due process.

MSR also asserts that BLM engaged in actions which prevented MSR from meeting the diligence requirements. It requests a hearing for the purpose of developing facts concerning this allegation. MSR states that though it first applied for a coal lease in 1972, BLM did not issue the lease until 1977, and thereafter twice denied its sublessee approval for a permit to mine coal. Further, MSR asserts that BLM required 7 months, from July 1983 to January 1984, to approve assignment of the lease from Ute Energy Company back to MSR. MSR adds that in 1984, when BLM denied an extension of time to meet diligence requirements, MSR made the decision to forego development because it was economically unfeasible to begin mining.

[1] MSR's arguments must be rejected. First, MSR's claim that it did not have an opportunity to protest the production figures in the February 6, 1978, letter is immaterial. The record does not show whether MSR actually received a copy of the February 1978 letter from GS. MSR asserts that it did not. However, MSR cites no statutory or regulatory provisions that would have required the Government to have provided MSR with notice of the production requirements, especially in light of the fact that at the time of the February 1978 letter, MSR had subleased its interest in the lease, subject to an overriding royalty interest, to Marad. Moreover, each of the sublease agreements with Marad contained a section, section 6, entitled "Obligation of Sublessee," which states "[s]ublessee shall perform all of the covenants and conditions which are to be performed by Sublessor, as Lessee under the Lease * * * Sublessee will indemnify and save Sublessor harmless against all liability arising out of the nonperformance thereof."

MSR does not argue that Marad never received notice, and under the sub-lease agreements, Marad had undertaken MSR's lease obligations. Thus, Marad assumed the statutory requirement to diligently develop the lease. That
obligation was not subject to being triggered or suspended by administrative

4/ BLM captions its action as a termination "by Operation of Law." The statute is not self-executing, however, and requires administrative or
ministerial action to effect a termination. Therefore, BLM's action is more accurately characterized as a termination "pursuant to authority of law."

action taken by BLM. 5/ In addition, we find nothing in the statute or regulations which would provide for suspension of production requirements or the diligent development period pending BLM's notification to the lessee of production amounts necessary to meet those requirements. If MSR has any complaint in this case regarding notice, it is with Marad, not BLM.

Further, we note that MSR does not argue that the production figures in the February 1978 letter were incorrect. In fact, a summary review of the history of lease U-5135 reveals that the production figures in that letter were not out of line with earlier estimates. Preference-right lease U-5135 grew out of a consolidation of several prospecting permits and was issued only after MSR made a showing that there existed on the lands to be embraced by the lease, a discovery of coal in commercial quantities. In order to make this showing, MSR retained Sanders Associates, Inc., to estimate the coal reserves on the subject lands. Sanders' evaluation of the coal reserves is discussed in an undated, though pre-lease issuance, memorandum from a BLM minerals specialist to the Chief, Branch of Lands and Minerals, Utah State Office, BLM, in which the author addressed MSR's qualifications to hold a preference-right lease. The memorandum contains tables listing the coal reserve estimates made by Sanders, as well as those by GS. BLM's mineral specialist stated at page 3 of that memorandum that the Sanders estimate was "about 20 million tons greater than that of the USGS." In his conclusions, he stated that the lands applied for contained about 100 million tons of minable coal. The memorandum noted that MSR had obtained prospective purchasers for the coal and a production rate of 750,000 to 1 million tons per year was anticipated.

When lease U-5135 issued on May 1, 1977, MSR was not only aware of the quantity of coal reserves underlying the leased lands, but was also on notice of its statutorily imposed obligation to diligently develop those reserves, as well as the consequences of failing to do so. MSR has not claimed ignorance of these requirements, nor can it, because it is presumed to have knowledge of the statutes and regulations affecting its lease. Federal Crop Insurance Corp. v. Merrill, 332 U.S. 380 (1947); Terra Resources, Inc., 107 IBLA 10, 14 (1989); Getty Oil Co., 61 IBLA 226, 89 I.D. 26 (1982).

Second, MSR's charges that it was prevented from meeting the due diligence requirements by the actions of BLM are no better founded. A review of the file demonstrates that BLM duly processed all actions in accordance with applicable law and regulations. MSR has not shown that BLM, in any particular instance, failed to act within some legally imposed deadline. Even assuming MSR could show a neglect of duty, or a failure to act on the part of a BLM official, the authority of the United States to enforce a public

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5/ While 30 U.S.C. § 207(b) (1982) provides for suspension where lease operations "are interrupted by strikes, the elements, or casualties not attributable to the lessee," it emphatically provides that "[n]othing in this subsection shall be construed to affect the requirement contained in the second sentence of subsection (a) of this section relating to commencement of production at the end of ten years."

right or protect a public interest is not vitiated or lost by such neglect or failure. Reo Broadcast Management Co., 98 IBLA 139 (1987). No hearing is required to develop additional evidence. MSR's request for a hearing is denied. We conclude that BLM properly terminated the lease.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Bruce R. Harris
Administrative Judge

I concur:

John H. Kelly
Administrative Judge